



MICHIGAN HOUSE OF REPRESENTATIVES

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MEMORANDUM

To: Chairman Walsh and Members of House Judiciary Committee

From: Rep. Holly Hughes

Re: House Bill 5055

Attached is a memorandum from Kevin Even in response to concerns brought up during his testimony on April 19, 2012 in support of House Bill 5055.

MEMORANDUM

TO: Honorable John Walsh
CC: Honorable Holly Hughes
RE: House Bill No. 5055
DATE: May 23, 2012

I. ISSUE:

What effect does House Bill No. 5055 have on the existing confidential provisions of Section 11(a) of the Michigan Employment Security Act? The short answer is the bill has no effect other than to waive the privilege in the limited circumstance allowed by HB 5055.

II. ANALYSIS:

The language of House Bill No. 5055 does not require the Unemployment Insurance Agency ("UIA") to disclose confidential information to any third party. The Michigan Employment Security Act currently provides such information to the employer and the employee.

Section 11 (b)(ii) of the Act states:

Any information in the commission's possession that may affect a claim for benefits or a charge to an employer's experience account shall be available to interested parties as defined in R 421.201 of the Michigan administrative code (emphasis added).

Rule 201 of the Michigan administrative code provides that:

(1) The term "interested party," as used in the act or these rules, means anyone whose statutory rights or obligations might be affected by the outcome or disposition of the determination, redetermination, or decision. An interested party has all of the following rights:

(a) The right to receive a copy of the notice of determination or redetermination.

(b) The right to request a reconsideration of the determination or redetermination.

(c) The right to appeal to a referee or the board of review in the manner provided in the act.

(2) The agency is an interested party in any appeal before a referee, the

board of review, or in any judicial action involving an order or decision of the board of review or a referee.

(3) An employer or employing entity in this or another state is an interested party in connection with a claim for benefits if the employer's or employing entity's account has been charged, the employer or employing entity is presently or potentially chargeable with some portion of benefits paid or payable on such claim, or the employer or employing entity is directly involved in a possible ineligibility or disqualification of a claimant.

MI ADC R. 421.201

To the extent an interested party opens the door in a subsequent proceeding to information already disclosed to the employer, or vice versa, the privilege that currently exists preventing such information from being used is deemed waived under HB 5055.

HB 5055 states:

An individual who *testifies voluntarily* before another body concerning representations the individual made to the unemployment agency pursuant to the administration of this act *waives any privilege under section 11 otherwise applying* to the individual's representations to the unemployment agency (emphasis added).

In short House Bill No. 5055 allows either the employee or employer, to use information already disclosed to them in accordance with the Michigan Employment Security Act, in the event either takes a contrary position in a subsequent proceeding where such information might otherwise be relevant. The remaining confidential provisions of the Michigan Employment Security Act would stay intact as HB 5055 does not require the UIA to make any disclosure to third parties.